

April 9, 2018

**VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Room TWA325  
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentation**  
**CG Docket No. 02-278**

Dear Ms. Dortch:

On April 5, 2018, Mark W. Brennan and Arpan A. Sura of Hogan Lovells US LLP, counsel to the American Association of Healthcare Administrative Management (“AAHAM”); Paul Miller of Miller/Wenhold Capitol Strategies, representing AAHAM; Dana Thomas of Anthem, Inc.; Mike Merola and Michael McMenamin of Winning Strategies Washington; and Vincent Frakes of WellCare Health Plans, Inc met with Zenji Nakazawa, Legal Advisor, Public Safety and Consumer Protection, for Chairman Pai.

During this meeting, we urged the Federal Communications Commission (“FCC” or “Commission”) to expeditiously grant the Joint Petition,<sup>1</sup> which seeks two clarifications regarding healthcare-related communications under the Telephone Consumer Protection Act (“TCPA”) and the FCC’s *2015 Omnibus TCPA Order*.<sup>2</sup>

1. That the provision of a phone number to a “covered entity” or “business associate” (as those terms are defined under Health Insurance Portability and Accountability Act of 1996 (“HIPAA”)) constitutes prior express consent for non-telemarketing calls allowed under HIPAA for the purposes of treatment, payment, or health care operations.
2. That the prior express consent clarification in paragraph 141 and the non-telemarketing health care message exemption granted in paragraph 147, both in the *2015 Omnibus TCPA Order*, be clarified to include HIPAA “covered entities” and “business associates.” Specifically, each use of the term “healthcare provider” in paragraphs 141 and 147 of the *2015 Omnibus TCPA Order* should be clarified to encompass “HIPAA covered entities and business associates.”

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<sup>1</sup> See Joint Petition of Anthem, Inc., Blue Cross Blue Shield Association, WellCare Health Plans, Inc., and the American Association of Healthcare Administrative Management for Expedited Declaratory Ruling and/or Clarification of the 2015 TCPA Omnibus Declaratory Ruling and Order, CG Docket No. 02-278 (filed July 28, 2016) (“Joint Petition”).

<sup>2</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015) (“*2015 Omnibus TCPA Order*”), *rev’d in part by ACA Int’l v. Fed. Commc’ns Comm’n*, 15-1211, 2018 WL 1352922 (DC Cir. Mar. 16, 2018).

We also discussed the recent *ACA v. FCC* decision, in which the U.S. Court of Appeals for the District of Columbia Circuit confirmed that the FCC has broad authority to harmonize the TCPA and HIPAA.<sup>3</sup>

We discussed the substantial consumer healthcare benefits and voluminous evidence on the record in support of the Joint Petition, including bipartisan support from both the House<sup>4</sup> and Senate.<sup>5</sup> As we explained during our meeting, time is of the essence for a Commission decision, including for example because June provider negotiations with states include consumer outreach requirements performed under various Medicaid contracts.

For these reasons, the Commission should grant the Joint Petition promptly and remove the uncertainty created by the *2015 Omnibus TCPA Order* that has chilled healthcare-related communications. Doing so would support a critical public policy goal of providing effective and efficient medical care, especially to at-risk populations. It would also support the Commission's longstanding policy of harmonizing HIPAA and the TCPA.<sup>6</sup>

In accordance with Section 1.1206(b)(2) of the Commission's rules, this letter is being filed electronically with your office. Please contact us with any questions in connection with this filing.

Respectfully submitted,

/s/ Mark W. Brennan

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<sup>3</sup> See *ACA Int'l*, 2018 WL 1352922, at \*19-22.

<sup>4</sup> See Letter from Rep. Gus Bilirakis, *et al.* to FCC Chairman Ajit Pai, at 1 (Oct. 13, 2017) (asking Chairman Pai to act promptly to "afford clarity to covered entities and business associates making non-marketing communications that benefit patients" and observing that "helpful, important non-marketing communications can be critical safeguards to reaching underserved populations and supporting more effective, efficient health care.").

<sup>5</sup> See Letter from Sens. Corey Booker and Bill Nelson to FCC Chairman Ajit Pai, at 1 (Nov. 3, 2017) (noting that the calls and text messages subject to the Joint Petition convey "important medical and treatment information" and "improve patient outcomes," stating that "time is of the essence to ensure that consumers' access to health care is not jeopardized," and asking the FCC to "resolve these issues as soon as possible (preferably within the next 90 days) and to protect communications allowed under HIPAA in light of their unique value to consumers and their positive impact on Americans' health and well-being.").

<sup>6</sup> See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 27 FCC Rcd 1830, 1831 ¶ 187 (2012).